

MF 08-2

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

v.

JOHN DOE d/b/a DOE  
CONSTRUCTION

Taxpayer

Docket # 07-ST-0000

Acct # 00-00000

NTL # 00-000000 0

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE d/b/a Doe Construction, *pro se*

Synopsis:

On June 18, 2007, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to JOHN DOE d/b/a Doe Construction ("taxpayer") for motor fuel use tax. The NTL alleges a commercial motor vehicle was found operating in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*) or without a valid single trip permit pursuant to section 13a.5 of the Act. The NTL alleges that the taxpayer is the person who was required to obtain the license or permit,

and the NTL assesses a \$1,000 penalty. The taxpayer timely protested the NTL, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On June 7, 2007, the taxpayer's employee was operating a truck with apportion plates and registered weight of 54,000 pounds in Illinois without a valid motor fuel use tax license. (Dept. Ex. #1)

2. On June 18, 2007, the Department issued NTL number 00-000000 0 to the taxpayer for motor fuel use tax showing a penalty due of \$1,000 for failure to have a valid license while the vehicle was operated on June 7, 2007. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that a commercial motor vehicle was found operating in Illinois without a valid motor fuel use tax license and without properly displaying decals as required under section 13a.4 of the Act, which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). The Act defines "commercial motor vehicle" as follows:

[A] motor vehicle used, designed or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or

registered gross vehicle weight exceeding 26,000 pounds \*\*\*, or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds \*\*\*, except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. \*\*\*. (35 ILCS 505/1.16).

Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 ILCS 505/13a.4). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. (35 ILCS 505/21; 120/5). Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1<sup>st</sup> Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2<sup>nd</sup> Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer argues that he was not aware that he needed to have the license and decals. He contends that the State should make people aware of this requirement when taxpayers purchase plates for their trucks. He also believes that a warning should be issued prior to assessing the penalty.

The Act does not contain an exception that allows a waiver of the penalty for any mitigating circumstances. Although the taxpayer may have been unaware of the requirement and obtained the license and decals after his driver was stopped, his truck still did not have the license and decals or permit on the day in question. Because the taxpayer has failed to present evidence to overcome the Department's *prima facie* case, it is recommended that the Notice of Tax Liability be affirmed.

Linda Olivero  
Administrative Law Judge

Enter: February 25, 2008